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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

**IN RE GOOGLE PLAY STORE  
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

*Epic Games, Inc. v. Google LLC et al.*,  
Case No. 3:20-cv-05671-JD

Case No. 3:21-md-02981-JD

**EPIC GAMES, INC.'S OPPOSITION TO  
GOOGLE'S ADMINISTRATIVE MOTION  
TO FILE UNDER SEAL, AND GOOGLE'S  
ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER ANOTHER  
PARTY'S MATERIAL SHOULD BE  
SEALED**

1 Plaintiff Epic Games, Inc. (“Epic”) submits this Opposition to Google’s Administrative Motion  
 2 to File Under Seal (ECF No. 356), and Google’s Administrative Motion to Consider Whether Another  
 3 Party’s Material Should Be Sealed (ECF No. 357).<sup>1</sup>

4 These administrative motions seek to seal information designated confidential by Google and  
 5 Activision Blizzard King (“ABK”) that appears in Google’s October 23, 2022 opposition papers to  
 6 Epic and Match’s motion to amend their complaints. (ECF No. 355.) Earlier this month, Google (ECF  
 7 No. 352) and ABK (ECF No. 350) sought to seal similar information appearing in Epic and Match’s  
 8 motion to amend and the proposed amended complaints (ECF Nos. 343, 344). Epic opposed these  
 9 prior sealing efforts to the extent that Google and ABK failed to show the required compelling reasons  
 10 for preventing the public from understanding the facts and allegations that form the basis of Epic’s  
 11 claims. (See ECF Nos. 353 (response to ABK), 354 (response to Google).) The information at issue in  
 12 the present motions to seal portions of Google’s opposition papers is substantially similar to the  
 13 information that Epic opposed sealing in connection with Epic’s moving papers. Therefore, for the  
 14 reasons set forth in Epic’s previous sealing oppositions (ECF Nos. 353, 354), and the reasons that  
 15 follow, Google’s motions should be denied in substantial part.

16 **I. Google’s Administrative Motion to File Under Seal (ECF No. 356) Should Be Denied.**

17 To keep information under seal, Google bears the burden of establishing “compelling reasons  
 18 supported by specific factual findings, that outweigh the general history of access and the public  
 19 policies favoring disclosure”. See, e.g., *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-  
 20 79 (9th Cir. 2006).

21 Google seeks to seal (i) the identities of the counterparties to its agreements not to compete,  
 22 and (ii) high-level descriptions of the key terms of those agreements that achieved Google’s goal of  
 23 preventing competition. (See ECF Nos. 356, 357.) This is the same type of information that Google  
 24 sought to seal in connection with Epic’s motion to amend—and Google’s arguments for sealing it are  
 25 substantially the same. As Epic previously explained, and reiterates below, Google has failed to  
 26 establish “compelling reasons” for keeping this information under seal. (See ECF No. 354.)  
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<sup>1</sup> All citations are to the MDL docket unless otherwise indicated.

1        *First*, Google seeks to seal numerous references to the names of three counterparties to its  
 2 Project Hug agreements.<sup>2</sup> Its effort to seal these names consists of boilerplate assertions that  
 3 disclosure would “implicate[] the non-part[ies]’ confidentiality interests” or “reveal[] strategic  
 4 decision-making which, for example, could give a competitor or potential business partner unfair  
 5 leverage in competing against or negotiating with Google”. (*E.g.*, ECF No. 356-1 ¶ 1.) As Epic  
 6 previously explained, these are not compelling reasons for sealing. The fact that one of these  
 7 developers signed a Project Hug agreement is already public (ECF No. 354 at 5); the unspecified  
 8 interests of non-parties do not establish harm to Google itself (*id.* (citing *Aerojet Rocketdyne, Inc. v.*  
 9 *Glob. Aerospace, Inc.*, 2019 WL 8273956, at \*2 (E.D. Cal. July 18, 2019))); and vague assertions like  
 10 Google’s are not “articulable facts identifying the interests favoring continued secrecy” (*id.* (quoting  
 11 *Kamakana*, 447 F.3d at 1178-79)). Moreover, the identities of these major developers are not sealable  
 12 information; they are important facts that will help the public understand why Project Hug foreclosed a  
 13 significant portion of the Android app distribution market. (*See* ECF No. 354 at 5.)

14        *Second*, Google seeks to seal its own high-level (and incomplete) description of Project Hug.<sup>3</sup>  
 15 Google’s declaration makes the threadbare assertion that this description “reveals Google’s strategic  
 16 decision-making” (ECF No. 356-1 ¶ 2), and its sealing motion goes further and asserts that the  
 17 description includes “Specific Deal Terms” (ECF No. 356 at 3). Even if this language disclosed  
 18 specific deal terms (it does not), “essential contractual terms (as opposed to merely ancillary ones),  
 19 [described] at a reasonably high level of generality”, cannot be sealed absent “compelling reasons”.  
 20 *Tevra Brands LLC v. Bayer HealthCare LLC*, 2020 WL 1245352, at \*3 (N.D. Cal. Mar. 16, 2020).  
 21 Google has offered no such reasons here. (*See* ECF No. 354 at 3.)

22        Epic does not agree with Google’s characterizations of Epic’s claims and allegations. But  
 23 because Google is opposing Epic’s effort to plead those claims, the public has a strong interest in  
 24 understanding the basis for Google’s opposition, which Google’s proposed redactions obscure. Google  
 25  
 26

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27        <sup>2</sup> *See* ECF No. 355 at 3 (line 25), 5 (lines 13-14), 6 (line 27), 7 (lines 4-5, 8, 20-22), 10 (line 24);  
 28 ECF No. 355-4 at 382:24, 383:1-6, 384:12-14.

<sup>3</sup> ECF No. 355 at 5 (lines 4-7).

has failed to establish compelling reasons for sealing the information relied on in its filing, and its motion should be denied.

## **II. Google’s Administrative Motion to Consider Whether Another Party’s Material Should Be Sealed (ECF No. 357) Should Be Denied in Part.**

Through its second motion, Google asks the Court to consider sealing information designated confidential by ABK and the State plaintiffs. Epic takes no position on Google’s request to seal the State plaintiffs’ information.<sup>4</sup> The ABK information, however, is not properly sealable.

In its October 14, 2022 sealing request, ABK asked the Court to seal information found in Epic and Match’s motion to amend their complaints and related filings. (ECF No. 350.) As Epic explained in its response, ABK failed to establish compelling reasons for keeping this information under seal. (See ECF No. 353.) The same arguments apply here, where substantially the same ABK information is at issue.

*First*, Google seeks to seal references to the fact that a specific ABK executive was deposed in this MDL.<sup>5</sup> As Epic previously explained, most of the facts surrounding this deposition are public—in part because *ABK made them public* (ECF No. 259 at 8), and the Court identified the executive by name in an order compelling him to sit for a deposition (ECF No. 321). To the extent this information is not already public, ABK has not presented (and cannot present) compelling reasons for keeping it under seal. (See ECF No. 353 at 2-3.)

*Second*, Google asks the Court to consider sealing a single page of a deposition transcript that contains ABK’s purported confidential information.<sup>6</sup> Epic takes no position on sealing the portion of this transcript that arguably includes a pricing term.<sup>7</sup> But the remainder of the transcript cannot meet the Ninth Circuit’s “compelling reasons” standard. The transcript reveals that a deposition took place, but this is not sealable information for the reasons set forth above. The only other relevant information is the deponent’s assertion that contract terms described at a high level do not exist. (ECF No. 355-5 at 209:9-24.) The claimed non-existence of contract terms is far from the types of “pricing terms, royalty

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<sup>4</sup> See ECF No. 355-2.

<sup>5</sup> See ECF No. 355 at 7 (lines 20-22).

<sup>6</sup> See ECF No. 355-5 (full document).

<sup>7</sup> Epic does not oppose sealing the portion of the transcript found at page 209, lines 2-8.

1 rates, and guaranteed minimum payment terms” that are sometimes subject to sealing. *See Tevra*, 2020  
2 WL 1245352, at \*2. While Epic disagrees with the deponent’s assertions, there is no basis for keeping  
3 them under seal.

4 **CONCLUSION**

5 For the foregoing reasons, the Court should deny Google’s Administrative Motion to File  
6 Under Seal (ECF No. 356) in full, and deny Google’s Administrative Motion to Consider Whether  
7 Another Party’s Material Should Be Sealed (ECF No. 357) in part.

Dated: October 25, 2022

Respectfully submitted,

By: /s/ Lauren A. Moskowitz  
Lauren A. Moskowitz

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